



Advisory Opinion Request Form

An interested party may request an advisory opinion from the Chief Counsel on a matter regarding specific factual events only. This form is NOT for Cease and Desist requests. FTA has created a separate form for those requests. Please print out the form below and submit to docket FTA-2007-0023 at <http://www.regulations.gov>. Failure to submit to the docket will mean that FTA cannot consider your request.

1. The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to:

Actions by Capital Area Transit (CAT) in Harrisburg, PA in cancelling contracts for Trolley Service

2. Please give a full statement of all facts and legal points relevant to the request in the area provided below. If you need more room please attached a separate sheet of paper with the additional information.

See attachment

3. Do you affirm that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request?

☒ Yes

☐ No

4. Please certify the following: "I hereby certify that I have this day served the foregoing document on the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by

Fax, Web Submission, E-Mail

: FTA-2007-0023, ombudsman.charterservice@dot.gov

signature

2009-05-13 14:03:06

Benjamin Paris

13265 Coppermill Drive

Herndon, VA 20171

703-362-6814

paris.b.w@gmail.com

*** Please keep in mind that **ALL** field are required. Failure to provide the requested information could result in a delay in the processing time of your request.

May 13, 2009

Chief Counsel, Federal Transit Administration
1200 New Jersey Ave, S.E.
Room E55-302
Washington, DC 20590

Re: Request for an Advisory Opinion

The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to the FTA position on the matter of Benjamin Paris' contract for Trolley Service with the Capital Area Transit of Harrisburg, PA.

Below is contained a full statement of all facts relevant to this request

I affirm that the undersigned swears, to the best of his knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

I hereby certify that I have this day served the foregoing Advisory Opinion Request Form on the following interested parties at the following addresses and email or facsimile numbers:

Dated this 13th day of May, 2009

- FTA-2007-0023 @ www.regulations.gov
- Ombudsman.charterservice@dot.gov

Thank you for your consideration,



Benjamin W. Paris
13265 Coppermill Drive
Herndon, VA 20171
703-362-6814
Paris.b.w@gmail.com

The facts are set forth below with the intent of being presented in a Civil Action brought by Benjamin Paris against Mr. James Hoffer/Capital Area Transit Agency of Harrisburg, PA:

On or about February 11, 2001, I entered into a contract with Capital Area Transit (CAT) to provide Trolley Service for my once-in-a-lifetime wedding date on August 2, 2008. **The agreed upon price was \$330** for the service of transporting the wedding party from the Seven Sorrows church in Middletown, PA to the historical Hershey Mansion in Hershey, PA for photographs, and then dropping the wedding party off at the West Shore Country Club for the reception. **I made a down payment for this service of \$100 on February 11, 2008** which was charged to my credit card on that day and was provided a receipt and provided a contract detailing the specifics of the trip which I signed and returned effectively reserving the Trolley.

In mid-May, 2008, I was notified by Mr. James Hoffer (Executive Director of Capital Area Transit) that CAT intended to breach this contract because of legislation that had been passed in January, 2008 with enforcement beginning on April 30, 2008. The legislation in question is the Federal Register Part III Department of Transportation's Federal Transit Administration (FTA) Section 49 CFR Part 604 Charter Service: Final Rule. This legislation is dated Monday, January 14, 2008.

This legislation provides for penalties for publicly funded transit companies operating private charters. In summary, private companies filed complaints with the FTA to prevent public agencies (such as CAT) from operating private charters because the practice was unfair as public agencies receive federal subsidies. **The law was passed on January 14, 2008 with enforcement to begin effective April 30, 2008.**

I was notified on or about May 10, 2008 that CAT intended to breach the contract we had agreed to claiming they could no longer operate the trolley charter as it was now being enforced as being illegal. Mr. Hoffer and I exchanged numerous phone calls where I tried to suggest methods where the trolley service could be continued, however, at each attempt, I was told that they wouldn't provide the service. In June 2008, I contacted the Federal Transit Administration Ombudsman for Charter Bus Service, who informed me that CAT **could and should legally provide the trolley service for free** which would not be in violation of any regulation. When presented with this option, Mr. Hoffer was unwilling to do this claiming he would have to answer to the "citizens of Harrisburg" by incurring these costs. I attempted to contact Mr. Hoffer several more times after this heated discussion with no response. In addition, the advertisement offering the Trolley service remained on the CAT website through at least the end of June, 2008 when I last visited the site.

Rather than risk CAT's federal subsidies, be fined by the FTA for completing his contractual obligation with me, or incur minimal cost by operating the trolley service for free, Mr. Hoffer simply decided that it was in CAT's best interest to breach the contract and roll the dice with individual contract holders. CAT attempted to refund my initial \$100 deposit by sending a check, however, I was unwilling to accept this as a settlement and as such have not deposited it. This attempt to rescind a legally binding contract was unacceptable to me because of the short time lines associated with finding alternative transportation and because we had a binding contract. CAT advertised this unique historical trolley service, and could have provided it for free thereby fulfilling our contract but chose not to. I even inquired about letting another company operate the trolley that CAT owns, however, Mr. Hoffer rejected this as well.

With only 2+ months to find and reserve transportation for this once-in-a-lifetime event, Mr. Hoffer's decision sent me scrambling to find an available trolley (there aren't many of them around unfortunately). All of the local limousines (which would have not been what we had originally bargained for) of the size required were already booked, and renting a "Coach Bus" was not at all what was agreed to in size, scope, or spirit. For a once-in-a-lifetime wedding where pictures are being taken, and style is a primary factor, the trolley was a themed vehicle with historic and sentimental significance that a charter bus simply couldn't fulfill. Even though legally classified in the same family, it is easy to understand and clearly see the significant differences between a historical trolley and a city style bus. In the end, I had to venture outside of the Harrisburg Metro area to find something similar to what I was promised by and under contract to receive from CAT.

Two companies in the metro area (Unique Limosine and Hershey Trolley Works) operate trolleys, and neither was available, nor willing to provide Trolley Service on August 2, 2008 for various reasons (previously booked on other engagements). As such, I investigated companies from nearby major metropolitan regions including Gettysburg,

York, Lancaster, Lebanon, Philadelphia, and Baltimore before finding a privately operated trolley with availability on August 2, 2008. The company I found operated out of Baltimore and I entered into another contract with them for a substantially higher cost than what was originally agreed to with CAT. This was due to them having to travel almost 2 hours to and from the Harrisburg area to transport our wedding party. The total cost of this new service came to \$1060.

I requested numerous times that CAT make up the difference in cost between the \$1060 and the \$330 they promised me, however, my demand letter sent via Certified Mail in late 2008 also has gone unanswered.

I am asking the court award me the difference in the costs of what was incurred and what was agreed to in the agreement by CAT. CAT willfully breached a contract to avoid being fined by the FTA and risk federal subsidies or incur minimal cost. The contract we entered was entered into a FULL MONTH after the legislation was ratified, and services would have been provided 3 MONTHS after the enforcement was to begin. There was no reason why CAT should have entered into this agreement other than to falsely and unjustifiably assume that enforcement wouldn't occur. There was no communication that suggested that this service was potentially unable to be provided until I received the call notifying me of their intent to breach. I have since learned that CAT was involved with and understood the risks associated with the legislation even back through late 2007 when it was being discussed and prior to the final enactment on January 14, 2008 through their participation in regular conference calls on this very issue. CAT clearly understood or should have understood and informed me of the risk of regulatory action prior to committing to provide the service. On the slightest chance this wasn't known, CAT should have honored their contract and provided the service on my wedding day for free to make up for their errors in judgment and the decision to offer the service in the first place.

When it was confirmed that the law would be enforced, CAT simply cancelled agreements they entered. Their decision cost me almost over 3 times as much as what we originally contractually agreed to (\$1060 for the exact same service that CAT promised to me for \$330). I demand restitution for the difference of this amount and it is broken out as follows:

Down-payment for reservation of CAT Trolley: \$100.00
Total Cost of Baltimore Trolley remedy for CAT Breach: \$1060.00
TOTAL COSTS = \$1160.00

Original Cost of CAT Trolley Service = \$-330.00

Total Cost owed me due to CAT's Breach of Contract = \$830.00

I am requesting an advisory opinion on the facts set forth in the letter above.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Benjamin W. Paris', with a stylized, flowing script.

Benjamin W. Paris